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OFFICE OF PETITIONS

In re Application of
William S. Rickards III et al.
Application No. 09/733,800
Filed: December 9, 2000
Title of Invention: COLLABORATION ENGINE:
ADDING COLLABORATION FUNCTIONALITY
TO COMPUTER SOFTWARE

ON PETITION

This is a decision on the petition filed January 6, 2006, to revive the above identified application under 37 CFR 1.137(a)¹.

The petition to revive under 37 CFR 1.137(a) is **GRANTED**.

The application was held abandoned on April 14, 2005, for failure to file a timely response to the Final Office Action mailed January 13, 2005. The office action set a three month shortened statutory period. Accordingly, a Notice of Abandonment was mailed on December 2, 2005.

Petitioner asserts that a response to the Final Office Action, a Request for Continued Examination (RCE) and a request for a two month extension of time request, was timely filed and has submitted a copy of the reply said to have sent but not received in the U.S. Patent and Trademark Office.

Decisions on reviving abandoned applications on the basis of "unavoidable" delay have adopted the reasonably prudent person standard in determining if the delay was unavoidable:

The word 'unavoidable' . . . is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and

¹ A grantable petition under 37 CFR 1.137(a) must be accompanied by:

- (1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(l);
- (3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and
- (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137©).

observed by prudent and careful men in relation to their most important business. It permits them in the exercise of this care to rely upon the ordinary and trustworthy agencies of mail and telegraph, worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. If unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.²

Specifically, an application is "unavoidably" abandoned only where petitioner, or counsel for petitioner, takes all action necessary for a proper response to the outstanding Office action, but through the intervention of unforeseen circumstances, such as failure of mail, telegraph, telefacsimile, or the negligence of otherwise reliable employees, the response is not timely received in the Office.³

A review of the response (RCE) said to have been timely filed, reveals that it contains a certificate of mail pursuant to 37 CFR 1.8, dated June 24, 2005, and was signed by John T. Nosek on behalf of the assignee and with a statement under 37 CFR 3.73(b). A further review reveals that the RCE fee in the amount of \$395.00 and the two month extension of time fee in the amount of \$225.00 were both properly and timely applied to the finance account for the instant application.

It is noted therefore that the Notice of Abandonment was sent in error as the response was timely filed.

This matter is being referred to Technology Center 2193 for processing of the RCE and amendment filed June 24, 2005 and resubmitted December 9, 2005.

Telephone inquiries concerning this matter may be directed to the undersigned Petitions Attorney at (571) 272-3212.



Patricia Faison-Ball
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²In *re Mattullah*, 38 App. D.C. 497, 514-15 (1912)(quoting *Ex parte Pratt*, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)); see also *Winkler v. Ladd*, 221 F. Supp. 550, 552, 138 USPQ 666, 167-68 (D.D.C. 1963), *aff'd*, 143 USPQ 172 (D.C. Cir. 1963); *Ex parte Henrich*, 1913 Dec. Comm'r Pat. 139, 141 (1913). In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982). Finally, a petition cannot be granted where a petitioner has failed to meet his or her burden of establishing that the delay was "unavoidable." *Haines v. Quigg*, 673 F. Supp. 314, 316-17, 5 USPQ2d 1130, 1131-32 (N.D. Ind. 1987).

³*Ex parte Pratt*, 1887 Dec. Comm'r Pat. 31 (Comm'r Pat. 1887).